

In the United States Court of Federal Claims

No. 05-1119 L

Filed: May 1, 2015

ST. BERNARD PARISH GOVERNMENT
AND OTHER OWNERS OF REAL
PROPERTY IN ST. BERNARD PARISH
OR THE LOWER NINTH WARD OF THE
CITY OF NEW ORLEANS,

Plaintiffs,

v.

THE UNITED STATES,

Defendant.

Federal Rules of Evidence;
Rule of the United States Court of
Federal Claims (“RCFC”) 26
(General provisions governing
discovery).

MEMORANDUM OPINION AND FINAL ORDER ON EVIDENTIARY ISSUES

From December 12, 2011 to December 15, 2011, the court convened a trial in New Orleans, Louisiana. 12/12/11–12/15/11 TR 1–1236. The exhibits identified in this Order were introduced and comprise the record as to liability. The court’s rulings regarding evidentiary issues are discussed herein.

I. DOCUMENTS PROFFERED BY THE PARTIES WITHOUT OBJECTION THAT THE COURT RULES ARE ADMITTED INTO EVIDENCE.

A. Plaintiffs' Trial Exhibits.¹

1. Plaintiffs' SPX Exhibits.

SPX.0004	SPX.0008	SPX.0138	SPX.0161	SPX.0163	SPX.0406	SPX.0479
SPX.0487	SPX.0492	SPX.0501	SPX.0535	SPX.0541	SPX.0544	SPX.0545
SPX.0546	SPX.0549	SPX.0625	SPX.0626	SPX.0627	SPX.0628	SPX.0629
SPX.0631	SPX.0632	SPX.0633	SPX.0634	SPX.0635	SPX.0636	SPX.0637
SPX.0638	SPX.0639	SPX.0640	SPX.0641	SPX.0642	SPX.0643	SPX.0644
SPX.0645	SPX.0646	SPX.0647	SPX.0648	SPX.0649	SPX.0650	SPX.0651
SPX.0652	SPX.0653	SPX.0654	SPX.0655	SPX.0656	SPX.0657	SPX.0658
SPX.0659	SPX.0660	SPX.0661	SPX.0662	SPX.0663	SPX.0664	SPX.0665
SPX.0666	SPX.0667	SPX.0668	SPX.0669	SPX.0670	SPX.0671	SPX.0672
SPX.0673	SPX.0674	SPX.0675	SPX.0676	SPX.0677	SPX.0678	SPX.0679
SPX.0680	SPX.0681	SPX.0682	SPX.0683	SPX.0700	SPX.0701	SPX.0702
SPX.0704	SPX.0705	SPX.0706	SPX.0707	SPX.0708	SPX.0709	SPX.0710
SPX.0711	SPX.0712	SPX.0713	SPX.0714	SPX.0717	SPX.0718	SPX.0738
SPX.0740	SPX.0885	SPX.0893	SPX.0894	SPX.0895	SPX.0901	SPX.0905
SPX.0908	SPX.0909	SPX.0910	SPX.0911	SPX.0912	SPX.0913	SPX.0914
SPX.0915	SPX.0916	SPX.0917	SPX.0918	SPX.0919	SPX.0920	SPX.0921
SPX.0922	SPX.0923	SPX.0924	SPX.0925	SPX.0926	SPX.0927	SPX.0928
SPX.0929	SPX.0930	SPX.0931	SPX.0932	SPX.0933	SPX.0934	SPX.0935
SPX.0936	SPX.0937	SPX.0938	SPX.0939	SPX.0940	SPX.0941	SPX.0942
SPX.0943	SPX.0944	SPX.0945	SPX.0946	SPX.0947	SPX.0948	SPX.0949
SPX.0950	SPX.0951	SPX.0952	SPX.0953	SPX.0954	SPX.0955	SPX.0956
SPX.0957	SPX.0958	SPX.0959	SPX.0960	SPX.0961	SPX.0962	SPX.0963
SPX.0964	SPX.0965	SPX.0966	SPX.0967	SPX.0968	SPX.0969	SPX.0970
SPX.0971	SPX.0972	SPX.0973	SPX.0974	SPX.0975	SPX.0976	SPX.0977
SPX.0978	SPX.0979	SPX.0980	SPX.0981	SPX.0982	SPX.0983	SPX.0984
SPX.0985	SPX.0986	SPX.0987	SPX.0988	SPX.0989	SPX.0990	SPX.0991
SPX.0992	SPX.0993	SPX.0994	SPX.0995	SPX.0996	SPX.0997	SPX.0998
SPX.0999	SPX.01000	SPX.01001	SPX.01002	SPX.01003	SPX.01004	SPX.01005
SPX.01006	SPX.01007	SPX.01008	SPX.01009	SPX.01010	SPX.01011	SPX.01012
SPX.01013	SPX.01014	SPX.01015	SPX.01016	SPX.01017	SPX.01018	SPX.01019
SPX.01020	SPX.01021	SPX.01022	SPX.01023	SPX.01024	SPX.01025	SPX.01026
SPX.01027	SPX.01028	SPX.01029	SPX.01030	SPX.01031	SPX.01032	SPX.01033
SPX.01034	SPX.01035	SPX.01036	SPX.01037	SPX.01038	SPX.01039	SPX.01040
SPX.01053	SPX.01154	SPX.01156	DX-41	DX-53	DX-88	DX-138
DX-193	DX-202	DX-211				

¹ As discussed in the parties' March 23, 2012 Joint Submission Of Exhibits Offered Into Evidence (Dkt. No. 178) ("Joint Submission"), Plaintiffs have offered into evidence "SPX" exhibits appearing on Plaintiffs' pretrial exhibit list in this case, together with three categories of exhibits that were admitted in *Robinson v. United States*, Case No. 06-CV-2268 (E.D. La.) ("*Robinson*"): Plaintiff ("PX") exhibits; Defendant ("DX") exhibits; and Joint ("JX") exhibits. In its May 1, 2015, Memorandum Opinion And Order, the court indicates *Robinson* exhibits with the letter "R," i.e., "RPX," "RDX," and "RJX."

2. Robinson Exhibits.

DX-0001; DX-1104; JX-0195.

B. The Government's Trial Exhibits.

1. The Government's DX Exhibits.

DX-1	DX-49	DX-53	DX-78	DX-79	DX-80	DX-81
DX-86	DX-88	DX-91	DX-105	DX-111	DX-115	DX-133
DX-138	DX-174	DX-174(a)	DX-193	DX-195	DX-199	DX-202
DX-208	DX-210	DX-211	DX-212	DX-213	DX-214	DX-215
DX-216	DX-217					

2. Robinson Exhibits.

DX-1; DX-1104; JX-195.

C. Plaintiffs' Written Direct Testimony.

Dkt. No. 158 (Suhayda); Dkt. No. 159 (Kemp).

D. The Government's Written Direct Testimony.

Dkt. No. 160 (Britsch); Dkt. No. 161 (Resio).

E. Plaintiffs' Deposition Designations.²

Nancy Powell	January 30, 2008 deposition: 1; 6–15; 17–26; 28–30; 42–43; 50–53; 63–74; 79–84; 106–07; February 8, 2011 deposition: 1; 9–20; 25–37; 41–47; 55–66; 84–99; 106–09; 112–15; 123–37.
Greg Miller	1; 8–15; 23–35; 45–46; 55–63; 65–76; 78–81; 85–87; 107–08.
Michael Park	1–11; 36–48; 77–79.

² On October 28, 2011, Plaintiffs filed a Motion To Designate Deposition Transcript. Dkt. No. 134. On November 4, 2011, the Government filed a Motion To Designate Deposition Testimony. Dkt. No. 140. On November 14, 2011, the Government opposed Plaintiffs' Motion To Designate Deposition Testimony, and submitted cross-designations to the extent the court granted Plaintiffs' Motion. Dkt. No. 145. On November 21, 2011, Plaintiffs filed a Response to the Government's November 4, 2011 Motion. Dkt. No. 149. On November 23, 2011, Plaintiffs filed a Reply. Dkt. No. 153. On December 2, 2011, the court admitted the initial deposition designations. 12/2/11 Minute Orders (admitting Dkt. 134, 140).

Donald Resio	1; 5–15; 18–27; 29–31; 34–39; 47–56; 64–74; 84–87; 89–118; 125–31; 134–36.
Jerry Foster	1; 8–22; 25–31; 37–38; 45–49; 51–52; 58–60; 63–73; 75–80; 92–103; 110–23; 130–35; 141–58; 165–67; 175–79; 185–86; 199–200; 210; 221–25; 228–30; 234–41; 246–49.
Michelle Daigle	1; 6–13; 58–59; 78–83; 86–87; 107–08; 110–13; 135–37; 141–42.
Christopher Gilmore	1; 5–6; 9–12.
Steve Patorno	1–7; 9–20; 26.
Linda Mathies	1; 7–11; 15–21; 43–50; 55–67; 75–82; 98–99.
Sue Hawes	1; 4–9; 21–22; 33–41; 44–45.
Keith O’Cain	1; 9–13; 16–17; 28–30; 32–33; 36; 56; 73–78; 81–86; 88–90; 92–93; 106–22.
Rick Broussard	1; 6–8; 26–30; 38; 42–43.
Gary Zimmerer	1; 7–25; 27–40; 45–48; 50–59; 67–68; 81–82; 88–89; 101–04; 107–08; 117–25; 128–29; 139–52; 156–61.
Tommoso “Tommy” G. Tommaseo	October 18, 2010 deposition: 22:2–20; 27:19–28:11; 36:7–18; 54:20–55:15; 61:4–8; 71:16–25; 81:11–82:4; 90:19–91:6; 99:14–23; 109:4–11; 131:24–132:13; 157:15–19; 173:15–174:20.
Steven and Cynthia Bordelon	October 14, 2010 deposition: 17:8–15; 18:5–19:1.
Edward John Robin, Jr.	October 13, 2010 deposition: 18:17–19:12; 21:17–22; 26:21–27:15.
Rod W. Willhoft	October 20, 2010 deposition: 24:21–25:9; 36:9–36:24; 43:24–44:2.
Gwendolyn and Henry Adams	October 15, 2010 deposition: 18:9–19:1.
Craig P. Tafaro, Jr.	January 13, 2011 deposition: 24:18–25:5; 26:4–24; 40:12–41:21; 78:18–79:2; 98:2–15; 103:1–4; 114:4–115:25; 122:19–22.
Michelle Walsh	January 13, 2011 deposition: 46:16–20.

Myllinda Gettys

January 12, 2011 deposition: 22:21–23:9; 30:9–24;
31:11–13; 45:22–46:15; 50:24–51:17; 56:11–19.

F. The Government’s Deposition Designations.

Tommoso “Tommy” G. Tommaseo

October 18, 2010 deposition: 1; 5:13–8:3; 10:18–
11:5; 14:13–16:4; 19:17–20:13; 20:22–21:22; 24:6–
10; 26:22–27:9; 32:2–9; 34:15–36:6; 38:1–9; 38:19–
39:3; 39:13–21; 42:5–45:19; 69:25–71:15; 78:23–
79:2; 79:25–81:10; 88:6–90:18; 97:1–99:13; 104:2–
106:19; 117:12–124:25; 126:1–13; 129:3–12;
130:7–24; 133:12–16; 135:13–24; 139:6–144:9;
153:18–157:14.

Steven John Bordelon

October 14, 2010 deposition: 1; 8:1–9:11; 13:12–
14:8; 14:20–24; 16:1–17:7; 20:16–22:10; 24:25–
25:9; 26:4–14; 30:4–9; 30:16–20; 31:15–32:4; 32:9–
21; 37:2–7.

Brad Lee Robin

October 13, 2010 deposition: 1; 7:5–9; 11:17–22;
13:2–4; 14:19–15:23; 24:13–15; 33:1–17; 34:6–20;
37:5–39:9; 40:24–41:18; 45:18–46:21; 48:2–49:12;
56:15–58:24; 65:2–7; 65:14–68:23; 71:15–72:3;
75:11–23; 80:7–25; 82:2–8; 89:12–25; 93:4–10;
95:11–16; 97:12–98:24; 99:17–100:4; 101:11–14;
119:1–12.

Edward John Robin, Jr.

October 13, 2010 deposition: 1; 6:5–8; 16:3–8;
21:25–24; 23:22–24:19; 25:7–27:15; 28:16–18;
33:9–10; 35:1–4.

Rod Wilhoft

October 10, 2010 deposition: 1; 5:19–24; 7:24–8:1;
8:18–22; 9:1–11:8; 17:19–18:15; 20:6–25; 22:1–11;
23:6–16; 28:3–11; 29:2–30:23; 32:9–13; 34:5–24;
42:22–43:8; 44:11–17; 45:14–46:1; 48:5–14.

Gwendolyn and Henry Adams

October 15, 2010 deposition: 1; 5:9–15; 6:8–13; 7:8–
22; 8:18–9:4; 12:21–13:18; 15:19–16:8; 19:2–20:13;
27:23–28:16; 38:20–39:7.

Craig Taffaro

January 13, 2011 deposition: 1; 19:7–9; 41:22–
42:13; 45:18–47:19; 48:9–49:13; 51:24–53:20;
66:16–67:3; 69:2–15; 71:14–17; 73:10–14; 83:20–
24; 93:12–95:23; 96:21–98:1; 99:11–101:11; 122:6–
18.

Michelle Walsh	January 12, 2011 deposition: 1; 22:8–23:8; 38:19–40:21; 49:2–19; 52:2–17; 56:7–65:21.
Myllinda Gettys	January 12, 2011 deposition: 1; 8:13–9:13; 32:14–17; 34:20–35:13.
Nancy Powell	January 30, 2008 deposition: 39:20–41:1; 45:10–22; February 8, 2011 deposition: 49–52.
Greg Miller	37–40; 89:1–90:5.
Michael Park	13:1–23; 29:1–34; 58:16–61:14.
Donald Resio	138–161:1–6.
Jerry Foster	202–05; 214–17.
Sue Hawes	23–32; 42–43; 46–52.
Keith O’Cain	21–24.
Gary Zimmerer	60–66; 76:15–78:21; 90–91:16; 98:16–99.

G. The Court’s Resolution.

The court rules that the documents referenced herein, at Section I, are admitted into evidence. *See* Court Exhibit A § I.

II. DOCUMENTS PROFFERED BY PLAINTIFFS, TO WHICH THE GOVERNMENT OBJECTS.³

A. Plaintiffs’ Trial Exhibits.

1. Plaintiffs’ SPX Exhibits.

a. Interagency Performance Evaluation Task Force, Independent Levee Investigations Team, And Team Louisiana Exhibits.

Plaintiffs proffered twenty-nine exhibits, consisting of reports and associated documents prepared by the Interagency Performance Evaluation Task Force (“IPET”), the Independent Levee Investigations Team (“ILIT”), and Team Louisiana. Dkt. No. 178-1, at 1–3. The Government

³ The Government objects to the admission of each of the documents listed in this section, “renew[ing] all evidentiary objections asserted at trial” and “object[ing] that each exhibit not used at trial lacks foundation to be admitted into the record.” Dkt. No. 178-1, at 1 n.1.

objects to twenty-five⁴ of these exhibits in their entirety on relevance and hearsay grounds. Dkt. No. 178-1, at 1–3. The Government also objects to the admission of two exhibits as whole documents, but does not object to the admission of portions actually discussed with the witness. Dkt. No. 178-1, at 1–2 (objecting to SPX.0010 and SPX.0023).⁵

As to relevance, the IPET, ILET, and Team Louisiana exhibits are reports that discuss why the Southeast Louisiana’s Hurricane Protection System (“HPS”) failed. *See, e.g.*, SPX.0001, at I-1; SPX.0027, at PDF 2, xix; SPX.0029, at i. The court rules that these exhibits are relevant, because they “ha[ve] a tendency to make a fact more or less probable” and “the fact is of consequence in determining the action.” FED. R. EVID. 401; *see also* FED. R. EVID. 402 (stating that “relevant evidence is admissible”).⁶

As to hearsay,⁷ these exhibits are evaluations of the HPS by groups commissioned by the Army Corps. *See, e.g.*, SPX.0001, at I-1 (“ITEP was established by the Chief of [the Army Corps of] Engineers [“Army Corps”] to determine the facts concerning the performance of the HPS in New Orleans and Southeast Louisiana during Hurricane Katrina.”); SPX.0027, at PDF 2, xix (The ILIT was funded by grants from the National Science Foundation, and the ILIT “report presents the results of an investigation of the performance of the New Orleans regional flood protection system during Hurricane Katrina[.]”); SPX.0029, at i (Team Louisiana was “commissioned . . . by the Louisiana Department of Transportation and Development . . . to assemble a team of Louisiana-based academic and private sector experts to collect forensic data related to the failure of the levee systems around greater New Orleans that occurred during . . . Hurricane Katrina[.]”) (internal quotation marks omitted). For these reasons, the court rules that these twenty-five exhibits are

⁴ The twenty-five exhibits consist of twenty-two IPET exhibits, two ILIT exhibits, and one Team Louisiana exhibit. The twenty-two IPET exhibits are: SPX.0001; SPX.0002; SPX.0003; SPX.0005; SPX.0006; SPX.0007; SPX.0009; SPX.0011; SPX.0012; SPX.0013; SPX.0014; SPX.0015; SPX.0016; SPX.0017; SPX.0018; SPX.0019; SPX.0020; SPX.0021; SPX.0022; SPX.0024; SPX.0025; SPX.0026. The two ILIT exhibits are: SPX.0027; SPX.0028. The Team Louisiana exhibit is: SPX.0029. Of these twenty-five exhibits, seven were admitted in their entirety in *Robinson* and five were admitted, in part, in *Robinson*. *See* Dkt. No. 178-1, at 1 n.2.

⁵ Of these two exhibits, one was admitted in full in *Robinson*.

⁶ Federal Rule of Evidence 401 provides that “[e]vidence is relevant if: (a) it has a tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action.” FED. R. EVID. 401; *see also* FED. R. EVID. 402 (stating that “relevant evidence is admissible unless any of the following provides otherwise: the United States Constitution; a federal statute; these rules; or other rules prescribed by the Supreme Court.”).

⁷ Although it would be impracticable to conduct an extensive multi-factor analysis of the hearsay exclusions and exceptions potentially applicable to every exhibit to which the Government objects on hearsay grounds, the court has carefully considered Federal Rules of Evidence 801, 803, and 804.

public records and business records, and therefore are exempt from hearsay. *See* FED. R. EVID. 803(8)⁸; FED. R. EVID. 803(6).⁹

For these reasons, the court rules that the IPET, ILIT, and Team Louisiana reports and associated documents are admitted. *See* Court Exhibit A § II.A.1.a.

b. United States Army Corps Of Engineers Exhibits.

Plaintiffs proffered 217 exhibits, consisting of reports, studies, design memoranda, emails, reconnaissance reports, and Flood Safety Program documents from the Army Corps. Dkt. No. 178-1, at 3–19. The Government objects to the admission of 212 of these exhibits in their entirety¹⁰

⁸ Federal Rule of Evidence 803(8) provides for excepting from the hearsay prohibition “[a] record or statement of a public office if: (A) it sets out: (i) the office’s activities; (ii) a matter observed while under a legal duty to report . . . ; or (iii) . . . factual findings from a legally authorized investigation; and (B) the opponent does not show that the source of the information or other circumstances indicate a lack of trustworthiness.” FED. R. EVID. 803(8).

⁹ Federal Rule of Evidence 803(6) excepts from the hearsay prohibition:

[a] record of an act, event, condition, opinion, or diagnosis if: (A) the record was made at or near the time by—or from information transmitted by—someone with knowledge; (B) the record was kept in the course of a regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit; (C) making the record was a regular practice of that activity; (D) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Rule 902(11) or (12) or with a statute permitting certification; and (E) the opponent does not show that the source of information or the method or circumstances of preparation indicate a lack of trustworthiness.

FED. R. EVID. 803(6).

¹⁰ The 212 Army Corps exhibits are: SPX.0100; SPX.0101; SPX.0102; SPX.0103; SPX.0104; SPX.0105; SPX.0107; SPX.0108; SPX.0113; SPX.0117; SPX.0118; SPX.0119; SPX.0123; SPX.0127; SPX.0128; SPX.0129; SPX.0130; SPX.0131; SPX.0132; SPX.0133; SPX.0134; SPX.0135; SPX.0136; SPX.0137; SPX.0140; SPX.0141; SPX.0142; SPX.0143; SPX.0144; SPX.0145; SPX.0146; SPX.0147; SPX.0148; SPX.0151; SPX.0152; SPX.0155; SPX.0156; SPX.0157; SPX.0158; SPX.0159; SPX.0160; SPX.0162; SPX.0164; SPX.0166; SPX.0167; SPX.0168; SPX.0170; SPX.0172; SPX.0173; SPX.0174; SPX.0175; SPX.0176; SPX.0178; SPX.0180; SPX.0184; SPX.0185; SPX.0186; SPX.0187; SPX.0188; SPX.0189; SPX.0190; SPX.0191; SPX.0192; SPX.0193; SPX.0194; SPX.0195; SPX.0196; SPX.0197; SPX.0198; SPX.0199; SPX.0200; SPX.0201; SPX.0202; SPX.0203; SPX.0204; SPX.0205; SPX.0206; SPX.0207; SPX.0208; SPX.0209; SPX.0210; SPX.0211; SPX.0212; SPX.0213; SPX.0214; SPX.0215; SPX.0216; SPX.0217; SPX.0218; SPX.0219; SPX.0220; SPX.0222; SPX.0223; SPX.0224; SPX.0225; SPX.0226; SPX.0229; SPX.0230; SPX.0231; SPX.0232; SPX.0233; SPX.0234; SPX.0236; SPX.0237; SPX.0238; SPX.0239; SPX.0241; SPX.0242; SPX.0243; SPX.0244; SPX.0246; SPX.0247; SPX.0248; SPX.0249; SPX.0250; SPX.0251; SPX.0252; SPX.0253; SPX.0254; SPX.0255; SPX.0256; SPX.0257; SPX.0258; SPX.0259;

and to portions of SPX.0169. Dkt. No. 178-1, at 3–19; *see also* Dkt. No. 178-1, at 7 (objecting to SPX.0169). The Government objects to these exhibits on the grounds of: relevance; cumulativeness; hearsay; waiver; and/or objection sustained at trial. The court addresses each of these categories.

The Government objects to 202 of these exhibits on relevance grounds. Dkt. No. 178-1, at 3–19. These exhibits include reports and studies, either conducted by the Army Corps or commissioned by the Army Corps, and Army Corps’ design memoranda, emails, Flood Safety Program documents, and other similar exhibits. Dkt. No. 178-1, at 3–19. In addition, the exhibits discuss the Mississippi River-Gulf Outlet channel (“MR-GO”), the ecosystem of Southeast Louisiana, flood protection systems, and the effects of the flooding events. Dkt. No. 178-1, at 3–19. Therefore, the court rules that these exhibits are relevant, because they “ha[ve] a tendency to make a fact more or less probable” and “the fact is of consequence in determining the action.” FED. R. EVID. 401; *see also* FED. R. EVID. 402 (stating that “relevant evidence is admissible”).

The Government objects to 172 of these exhibits on the grounds that they are cumulative. Dkt. No. 178-1, at 3–19. Although Federal Rule of Evidence 403 grants the court discretion to exclude evidence for efficiency, it does not require the exclusion of otherwise relevant evidence.¹¹ Therefore, the court rules that the “probative value” of these exhibits is not “substantially outweighed by [the] danger of . . . needlessly presenting cumulative evidence.” FED. R. EVID. 403.

The Government objects to thirty-nine of these exhibits on hearsay grounds. Dkt. No. 178-1, at 5–7, 16–17. Twenty-nine of these objections relate to Army Corps’ emails that discuss MR-GO, the Southeast Louisiana ecosystem, Hurricane Katrina related litigation, and other relevant topics. Dkt. No. 178-1, at 16–17. The court rules that these emails are admissible under the opposing party’s statement exclusion and under the business records exception to the hearsay

SPX.0260; SPX.0263; SPX.0266; SPX.0267; SPX.0268; SPX.0269; SPX.0272; SPX.0276; SPX.0277; SPX.0278; SPX.0280; SPX.0281; SPX.0282; SPX.0283; SPX.0284; SPX.0285; SPX.0286; SPX.0287; SPX.0289; SPX.0290; SPX.0291; SPX.0292; SPX.0293; SPX.0294; SPX.0295; SPX.0296; SPX.0297; SPX.0298; SPX.0303; SPX.0305; SPX.0308; SPX.0309; SPX.0310; SPX.0312; SPX.0315; SPX.0316; SPX.0319; SPX.0324; SPX.0326; SPX.0329; SPX.0331; SPX.0333; SPX.0334; SPX.0335; SPX.0337; SPX.0338; SPX.0342; SPX.0344; SPX.0346; SPX.0347; SPX.0349; SPX.0351; SPX.0352; SPX.0353; SPX.0354; SPX.0355; SPX.0356; SPX.0357; SPX.0359; SPX.0360; SPX.0361; SPX.0362; SPX.0363; SPX.0364; SPX.0365; SPX.0366; SPX.0367; SPX.0368; SPX.0372; SPX.0373; SPX.0374; SPX.0383; SPX.0384; SPX.0392; SPX.0393; SPX.0394; SPX.0395; SPX.0396; SPX.0397; SPX.0398; SPX.0399; SPX.0400; SPX.0401; SPX.0402; SPX.0403; SPX.0405; SPX.0407; SPX.0408. Of these 212 exhibits, thirty-two were admitted in their entirety in *Robinson* and four were admitted, in part, in *Robinson*. Dkt. No. 178-1, at 3–8, 10–14, 18. SPX.0169 was admitted in its entirety in *Robinson*. Dkt. No. 178-1, at 7.

¹¹ Federal Rule of Evidence 403 provides that “[t]he court *may* exclude relevant evidence if its probative value is *substantially outweighed* by a danger of . . . needlessly presenting cumulative evidence.” FED. R. EVID. 403 (emphasis added).

prohibition. *See* FED. R. EVID. 801(d) (opposing party's statement exclusion)¹²; FED. R. EVID. 803(6) (business records exception).

The other ten hearsay objections relate to the Army Corps' reports and studies. Dkt. No. 178-1, at 5–7. The court rules that these studies are admissible under the public records exception, the business records exception, and the opposing party's statement exclusion to the hearsay prohibition. *See* FED. R. EVID. 803(8) (public records exception); FED. R. EVID. 803(6) (business records exception); FED. R. EVID. 801(d) (opposing party's statement exclusion).

The Government objects to SPX.0134, because its objection to this exhibit was sustained at trial. Dkt. No. 178-1, at 5; 12/13/11 TR at 524–25 (Kemp Redirect). The court rules that SPX.0134 is not admissible.

Finally, the Government renewed its objections to SPX.0226, SPX.0255, and SPX.0256 that were raised at trial. Dkt. No. 178-1, at 11, 13; *see also* 12/13/11 TR at 509–11 (Kemp Redirect) (objecting on the grounds that the documents were not discussed during cross-examination). The court denied the Government's objection. 12/13/11 TR at 510, 513 (statement by the court that the scope of Plaintiffs' questions was "fair" and that "we've touched upon this in the cross-examination"). Therefore, the court rules that SPX.0226, SPX.0255, and SPX.0256 are admissible.

For these reasons, the court rules that the Army Corps exhibits are admitted. *See* Court Exhibit A § II.A.1.b.¹³

c. Federal Emergency Management Agency Documents And Related Materials.

Plaintiffs proffered fifty-nine Federal Emergency Management Agency ("FEMA") documents and related materials and one United States Geological Survey ("USGS") document,

¹² Federal Rule of Evidence 801(d) provides:

A statement . . . is not hearsay . . . (2) [if it] is offered against an opposing party and: (A) was made by the party in an individual or representative capacity; (B) is one the party manifested that it adopted or believed to be true; (C) was made by a person whom the party authorized to make a statement on the subject; (D) was made by the party's agent or *employee on a matter within the scope of that relationship and while it existed*; or (E) was made by the party's coconspirator during and in furtherance of the conspiracy.

FED. R. EVID. 801(d) (emphasis added).

¹³ The court also rules that SPX.0169 is admitted, as relevant evidence and as evidence admitted in *Robinson*. *See* FED. R. EVID. 402; *see also* Dkt. No. 178-1, at 7.

to which the Government objects on the grounds of relevance and cumulativeness. Dkt. No. 178-1, at 19–22.¹⁴

The fifty-nine FEMA and one USGS exhibits to which the Government objects include flood response and insurance information, maps of the affected area, and wetlands valuation information. Dkt. No. 178-1, at 19–22. Therefore, the court rules that these exhibits are relevant, because they “ha[ve] a tendency to make a fact more or less probable,” and “the fact is of consequence in determining the action.” FED. R. EVID. 401; *see also* FED. R. EVID. 402 (stating that “relevant evidence is admissible”). The court also rules that the “probative value” of these exhibits is not “substantially outweighed by [the] danger of . . . needlessly presenting cumulative evidence.” FED. R. EVID. 403.

For these reasons, the court rules that the FEMA and USGS exhibits are admitted. *See* Court Exhibit A § II.A.1.c.

d. Robinson Expert Reports.

Plaintiffs proffered seventeen expert reports from *Robinson*. Dkt. No. 178-1, at 22–25. The Government objects to fifteen of these exhibits, all on hearsay grounds, and to two under RCFC 26. Dkt. No. 178-1, at 22–25.¹⁵ The court will address these exhibits in Section II.A.2 below.

e. Plaintiffs’ Expert Declarations, Reports, And Materials Cited.

Plaintiffs proffered thirty-four expert declarations, reports, and materials cited. Dkt. No. 178-1, at 26–29. The Government objects to thirty-two¹⁶ of these exhibits on the following

¹⁴ The fifty-nine FEMA documents and related materials are: SPX.0409; SPX.0410; SPX.0411; SPX.0412; SPX.0413; SPX.0414; SPX.0415; SPX.0416; SPX.0418; SPX.0419; SPX.0420; SPX.0421; SPX.0422; SPX.0423; SPX.0424; SPX.0425; SPX.0426; SPX.0427; SPX.0428; SPX.0429; SPX.0430; SPX.0431; SPX.0432; SPX.0433; SPX.0434; SPX.0435; SPX.0436; SPX.0437; SPX.0438; SPX.0439; SPX.0440; SPX.0441; SPX.0442; SPX.0443; SPX.0444; SPX.0445; SPX.0446; SPX.0447; SPX.0448; SPX.0449; SPX.0450; SPX.0451; SPX.0452; SPX.0453; SPX.0454; SPX.0455; SPX.0456; SPX.0457; SPX.0458; SPX.0459; SPX.0460; SPX.0461; SPX.0462; SPX.0463; SPX.0464; SPX.0465; SPX.0466; SPX.0467; SPX.0469. The USGS document is SPX.0470. SPX.0415 was admitted in its entirety in *Robinson*.

¹⁵ The fifteen *Robinson* expert reports are: SPX.0471; SPX.0472; SPX.0473; SPX.0474; SPX.0475; SPX.0476; SPX.0478; SPX.0480; SPX.0482; SPX.0483; SPX.0484; SPX.0485; SPX.0486; SPX.0488; SPX.0489. For SPX.0483 and SPX.0484, the Government objects on both hearsay and RCFC 26 grounds. Ten of the documents were admitted in their entirety in *Robinson*, and two were admitted, in part.

¹⁶ The thirty-two expert declarations, reports, and materials cited are: SPX.0491; SPX.0494; SPX.0495; SPX.0496; SPX.0497; SPX.0499; SPX.0500; SPX.0502; SPX.0503; SPX.0504; SPX.0505; SPX.0506; SPX.0507; SPX.0508; SPX.0509; SPX.0510; SPX.0511; SPX.0512; SPX.0513; SPX.0515; SPX.0517; SPX.0518; SPX.0519; SPX.0520; SPX.0521;

grounds: *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993); hearsay; and RCFC 26.

The Government objects to five of these exhibits under *Daubert*. In *Daubert*, the United States Supreme Court abolished the “general acceptance” precondition to the admissibility of scientific evidence. See 509 U.S. at 597 (“To summarize: ‘General Acceptance’ is not a necessary precondition to the admissibility of scientific evidence under the Federal Rules of Evidence, but the Rules of Evidence—especially Rule 702—do assign to the trial judge the task of ensuring that an expert’s testimony both rests on a reliable foundation and is relevant to the task at hand. Pertinent evidence based on scientifically valid principles will satisfy those demands.”); see also *id.* at 593–94 (identifying four nonexclusive factors for the court to consider: (1) “whether it can be (and has been) tested”; (2) “whether the theory or technique has been subjected to peer review and publication”; (3) “the known or potential rate of error”; and (4) the general acceptance in the scientific community). *Daubert* and its progeny prompted a revision of Federal Rule of Evidence 702. See FED. R. EVID. 702 Advisory Committee notes (2000) (“Rule 702 has been amended in response to *Daubert* . . . and to many cases applying *Daubert*[.]”); see also FED. R. EVID. 702.¹⁷

These five exhibits include: the August 16, 2006 Sworn Declaration of Dr. G. Paul Kemp¹⁸; the August 12, 2011 Expert Report of Dr. Kemp; a MR-GO chronology prepared by Dr. Kemp; the July 1, 2011 Sworn Declaration of Dr. Joseph N. Suhayda¹⁹; and the August 12, 2011 Expert

SPX.0522; SPX.0523; SPX.0524; SPX.0525; SPX.0526; SPX.0527; SPX.0528. Six of these exhibits were admitted as evidence in *Robinson*.

¹⁷ Federal Rule of Evidence 702 provides:

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if: (a) the expert’s scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (b) the testimony is based on sufficient facts or data; (c) the testimony is the product of reliable principles and methods; and (d) the expert has reliably applied the principles and methods to the facts of the case.

FED. R. EVID. 702.

¹⁸ Dr. George Paul Kemp is a geologist and oceanographer, and is Vice President of the National Audubon Society and Director of the Louisiana Gulf Coast Initiative. He obtained his B.S. in Natural Resources from Cornell University, and his M.S. and Ph.D in Marine Sciences from Louisiana State University. See 12/6/11 Kemp Direct at 5–19.

¹⁹ Dr. Joseph N. Suhayda is a Coastal Hydrologist and Coastal Oceanographer with an advanced degree in Physical Oceanography. He obtained his B.S. in Physics from California State University, Northridge, and a Ph.D in Physical Oceanography from the University of California, San Diego, Scripps Institution of Oceanography. See 12/6/11 Suhayda Direct at 4–6.

Report of Dr. Suhayda. Dkt. No. 178-1, at 26.²⁰ Drs. Kemp and Suhayda have extensive educational qualifications and professional experience in relevant fields. 12/12/11 TR at 188–200 (explaining Dr. Kemp’s educational and professional qualifications, experience in post-Hurricane Katrina investigations, and his prior testimony in *Robinson*); 12/13/11 TR at 657–66 (explaining Dr. Suhayda’s educational and professional qualifications, experience in post-Hurricane Katrina investigations, and his prior testimony in other hurricane litigation). Therefore, the court rules that Drs. Kemp and Suhayda are qualified as expert witnesses under *Daubert* and that their testimony: “will help the trier of fact to understand the evidence”; “is based on sufficient facts or data”; “is the product of reliable principles and methods”; and “the expert has reliably applied the principles and methods to the facts[.]” FED. R. EVID. 702.

The Government also objects to thirty-two of these documents on hearsay grounds. Dkt. No. 178-1, at 26–29. The six exhibits that are Drs. Suhayda’s and Kemp’s sworn declarations, expert reports, and an appendix are inadmissible hearsay. *See* FED. R. EVID. 801(c)²¹; FED. R. EVID. 802.²² The remaining twenty-eight exhibits are reports on the hydrology and weather patterns of the New Orleans area that Plaintiffs’ experts were “made aware of or personally observed” and that “experts in the particular field would reasonably rely on . . . in forming an opinion on the subject.” FED. R. EVID. 703 (stating that evidence meeting the aforementioned criteria “need not be admissible for the opinion to be admitted” into expert testimony). And, the court rules that these twenty-eight reports satisfy the public records and business records exceptions to the hearsay prohibition. *See* FED. R. EVID. 803(8) (public records exception); FED. R. EVID. 803(6) (business records exception).

Because the court already ruled above that Drs. Suhayda’s and Kemp’s six expert reports, sworn declarations, and appendix are inadmissible hearsay, the court need not consider the Government’s RCFC 26 objections.

For these reasons, the court rules that twenty-six of the Plaintiffs’ expert declarations, reports, and materials cited exhibits to which the Government objects are admitted, but six of these exhibits are not. *See* Court Exhibit A § II.A.1.e; Court Exhibit B § II.A.1.e.

²⁰ On November 23, 2011, the Government filed separate Motions *In Limine* to exclude the testimony of Drs. Kemp and Suhayda that the court denied on December 2, 2011. At trial, the court informed the parties that it would rule on the admissibility of the testimony of Drs. Kemp and Suhayda when it issued a final opinion. 12/13/11 TR at 667.

²¹ Federal Rule of Evidence 801(c) provides, “‘Hearsay’ means a statement that: (1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted in the statement.” FED. R. EVID. 801(c).

²² Federal Rule of Evidence 802 provides, “Hearsay is not admissible unless any of the following provides otherwise: a federal statute; these rules; or other rules prescribed by the Supreme Court [of the United States].” FED. R. EVID. 802.

f. Plaintiffs' Declarations And Depositions.

Plaintiffs proffered fifty-two depositions and declarations. The Government objects to forty-six²³ of these exhibits. Dkt. No. 178-1, at 29–34. The Government objects to twelve of these exhibits on hearsay grounds and to SPX.0586 on grounds of relevance and cumulativeness. Dkt. No. 178-1, at 29–30, 32–33. In addition, the Government objects to thirty-three exhibits as whole documents, but not to those portions previously admitted. Dkt. No. 178-1, at 29–34.

As to SPX.0586, the court rules that it “has a tendency to make a fact more or less probable” and that “the fact is of consequence in determining the action.” FED. R. EVID. 401; *see also* FED. R. EVID. 402 (stating that “relevant evidence is admissible”). And, the court rules that the “probative value” of this exhibit is not “substantially outweighed by [the] danger of . . . needlessly presenting cumulative evidence.” FED. R. EVID. 403. Therefore, SPX.0586 is admitted.

As to hearsay, the twelve exhibits are four sworn declarations, one technical report, four photograph exhibits, and three letters. Dkt. No. 178-1, at 29–30, 32–33. The four sworn declarations are inadmissible hearsay. *See* FED. R. EVID. 801(c); FED. R. EVID. 802. In addition, because Plaintiffs did not properly authenticate the photographs in SPX.0580–83, these exhibits are inadmissible. *See* FED. R. EVID. 901.²⁴ But, SPX.0570 is a technical report prepared by the Army Corps that the court rules is admissible under the public records and business records exceptions to the hearsay prohibition. *See* FED. R. EVID. 803(8) (public records exception); FED. R. EVID. 803(6) (business records exception). SPX.0584, SPX.0588, and SPX.0590 are letters sent by government officials that also satisfy the public records and business records exceptions to the hearsay prohibition. *See* FED. R. EVID. 803(8) (public records exception); FED. R. EVID. 803(6) (business records exception).

As to the thirty-three exhibits to which the Government objects with exception to those portions designated and previously admitted, the Government does not present a “specific ground” or a ground that is “apparent from the context.” FED. R. EVID. 103(a)(1)(B); *see also* Dkt. No. 178-1, at 29–34. Therefore, the court rules that these exhibits are admissible in their entirety.

For these reasons, the court rules that thirty-eight of Plaintiffs’ declarations and depositions exhibits to which the Government objects are admitted, but eight of these exhibits are not. *See* Court Exhibit A § II.A.1.f; Court Exhibit B § II.A.1.f.

²³ The forty-six exhibits are: SPX.0529; SPX.0530; SPX.0531; SPX.0533; SPX.0536; SPX.0537; SPX.0538; SPX.0539; SPX.0540; SPX.0542; SPX.0547; SPX.0548; SPX.0556; SPX.0557; SPX.0558; SPX.0560; SPX.0563; SPX.0564; SPX.0566; SPX.0568; SPX.0570; SPX.0571; SPX.0573; SPX.0574; SPX.0575; SPX.0577; SPX.0578; SPX.0579; SPX.0580; SPX.0581; SPX.0582; SPX.0583; SPX.0584; SPX.0586; SPX.0588; SPX.0590; SPX.0594; SPX.0597; SPX.0598; SPX.0603; SPX.0609; SPX.0613; SPX.0615; SPX.0617; SPX.0618; SPX.0624. Five of these exhibits were admitted in their entirety in *Robinson*.

²⁴ Federal Rule of Evidence 901 provides, “To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.” FED. R. EVID. 901.

g. Congressional Documents.

Plaintiffs proffered ten congressional documents, of which the Government objects to nine²⁵ on the grounds of relevance and that they are cumulative. Dkt. No. 178-1, at 37–38.

As to relevance, the nine congressional document exhibits to which the Government objects include hearing statements and reports on Hurricane Katrina and the Army Corps’ response. Dkt. No. 178-1, at 37–38. The court rules that these exhibits are relevant, because they “ha[ve] a tendency to make a fact more or less probable” and “the fact is of consequence in determining the action.” FED. R. EVID. 401; *see also* FED. R. EVID. 402 (stating that “relevant evidence is admissible”).

In addition, the court rules that the “probative value” of these exhibits is not “substantially outweighed by [the] danger of . . . needlessly presenting cumulative evidence.” FED. R. EVID. 403.

For these reasons, the court rules that the congressional document exhibits are admitted. *See* Court Exhibit A § II.A.1.g.

h. St. Bernard Parish Studies.

Plaintiffs proffered twenty-one St. Bernard Parish studies, to five²⁶ of which the Government objects on hearsay grounds. Dkt. No. 178-1, at 38–39. Two exhibits were written by St. Bernard Parish, and three exhibits were prepared by a private company on behalf of St. Bernard Parish. *Compare* SPX.0715 and SPX.0722, with SPX.0719, SPX.0720, and SPX.0721. The court rules that these exhibits fall within the public records and business records exceptions to the hearsay prohibition. *See* FED. R. EVID. 803(8) (public records exception); FED. R. EVID. 803(6) (business records exception).

For these reasons, the court rules that the St. Bernard Parish studies are admitted. *See* Court Exhibit A § II.A.1.h.

i. Additional Reports.

Plaintiffs proffered twenty-one additional reports, to nineteen²⁷ of which the Government objects. Dkt. No. 178-1, at 39–42. The Government objects to seventeen exhibits on hearsay

²⁵ The nine congressional exhibits are: SPX.0687; SPX.0688; SPX.0689; SPX.0690; SPX.0692; SPX.0693; SPX.0696; SPX.0697; SPX.0698. Four of these exhibits were admitted in their entirety in *Robinson*. Dkt. No. 178-1, at 37–38.

²⁶ The five St. Bernard Parish studies are: SPX.0715; SPX.0719; SPX.0720; SPX.0721; SPX.0722.

²⁷ The nineteen additional reports are: SPX.0726; SPX.0728; SPX.0732; SPX.0733; SPX.0734; SPX.0736; SPX.0737; SPX.0741; SPX.0743; SPX.0744; SPX.0745; SPX.0746; SPX.0747; SPX.0748; SPX.0749; SPX.0750; SPX.0755; SPX.0756; SPX.0757. Two of these exhibits were admitted in their entirety in *Robinson*, and one was admitted, in part.

grounds, to SPX.0728 on hearsay and relevance grounds, and to SPX.0732 on relevance and cumulativeness grounds. Dkt. No 178-1, at 39–42.

Fourteen of the seventeen exhibits to which the Government objects are: reports prepared by or with assistance from a state or federal government; city or parish ordinances; a government employee report; or reports prepared by the National Research Council that is funded by the federal government. Dkt. No. 178-1, at 39–42. Therefore, the court rules that these exhibits fall within the public records and business records exceptions to the hearsay prohibition. *See* FED. R. EVID. 803(8) (public records exception); FED. R. EVID. 803(6) (business records exception).

Two other exhibits, SPX.0749 and SPX.0750, are articles that analyze risk in hurricane prone areas that were coauthored by an academic and ITEP’s Risk and Reliability Team Leader. SPX.0757 is an unidentified map of St. Bernard Parish properties with no known author. Therefore, the court rules that these documents are inadmissible hearsay, because SPX.0749 and SPX.0750 are articles, and SPX.0757 lacks foundation. *See* FED. R. EVID. 801(c) (hearsay definition); FED. R. EVID. 802 (hearsay prohibition).

As to relevance, SPX.0728 is an October 13, 1969 letter from the General Superintendent of the New Orleans Sewage and Water Board that discusses the modeling of historical hurricane data, and SPX.0732 is an October 20, 2000 status report of the modification of the MR-GO prepared for the Environmental Protection Agency. The court rules that these exhibits are relevant, because they “ha[ve] a tendency to make a fact more or less probable” and “the fact is of consequence in determining the action.” FED. R. EVID. 401; *see also* FED. R. EVID. 402 (stating that “relevant evidence is admissible”).

As to whether the SPX.0732 is cumulative, the court rules that the “probative value” of SPX.0732 is not “substantially outweighed by [the] danger of . . . needlessly presenting cumulative evidence.” FED. R. EVID. 403.

For these reasons, the court rules that sixteen of these exhibits are admitted, but three exhibits are not. *See* Court Exhibit A § II.A.1.i; Court Exhibit B § II.A.1.i.

j. Articles.

Plaintiffs proffered thirteen newspaper articles to which the Government objects on hearsay grounds. Dkt. No. 178-1, at 42.²⁸

These newspaper articles are hearsay and are not admissible for the truth of the matter asserted. *See* FED. R. EVID. 801(c); FED. R. EVID. 802; *see also* *Wathen v. United States*, 208 Ct. Cl. 342, 355 (1975) (holding that newspaper articles were hearsay).

For these reasons, the court rules that the newspaper articles are not admitted. *See* Court Exhibit B § II.A.1.j.

²⁸ The thirteen newspaper articles are: SPX.0758; SPX.0759; SPX.0760; SPX.0761; SPX.0762; SPX.0763; SPX.0764; SPX.0765; SPX.0766; SPX.0767; SPX.0770; SPX.0771; SPX.0772.

k. Mississippi River-Gulf Outlet Closure Committee Documents.

Plaintiffs proffered twenty-eight MR-GO Closure Committee documents to which the Government objects on hearsay grounds. Dkt. No. 178-1, at 42–44.²⁹ These exhibits primarily are meeting minutes from the Committee, as well as reports and maps. Dkt No. 178-1, at 42–44. The MR-GO Closure Committee consists of a public policy committee and technical advisory committee “to design and develop a cost effective program to phase out the MRGO[.]” SPX.0773, at PDF 5. Therefore, the court rules that these exhibits fall within the public records and business records exceptions to the hearsay prohibition. *See* FED. R. EVID. 803(8) (public records exception); FED. R. EVID. 803(6) (business records exception).

For these reasons, the court rules that the MR-GO Closure Committee documents are admitted. *See* Court Exhibit A § II.A.1.k.

l. Property Records Of Representative Plaintiffs.

Plaintiffs proffered 142 exhibits regarding the property records of representative Plaintiffs. Dkt. No. 178-1, at 44–62. The Government objects to three of these exhibits, one without specifying a ground and two as to the “portions of the document describing or related to properties not listed in the operative complaint.” Dkt. No. 178-1, at 45.³⁰ But, the Government does not present a “specific ground,” and the ground is not “apparent from the context.” FED. R. EVID. 103(a)(1)(B); *see also* Dkt. No. 178-1, at 29–34. Therefore, the court rules that these exhibits are admissible in their entirety.

For these reasons, the court rules that the exhibits regarding property records of representative Plaintiffs are admitted. *See* Court Exhibit A § II.A.1.l.

m. Multimedia And Miscellaneous Documents.

Plaintiffs proffered ninety-two multimedia and miscellaneous documents. The Government objects to eighty-nine³¹ on the following grounds: relevance; cumulativeness; hearsay; lack of foundation; RCFC 26; and *Daubert*. Dkt. No. 178-1, at 62–68.

²⁹ The twenty-eight MR-GO Closure Committee exhibits are: SPX.0773; SPX.0774; SPX.0777; SPX.0780; SPX.0783; SPX.0785; SPX.0788; SPX.0797; SPX.0807; SPX.0817; SPX.0822; SPX.0824; SPX.0825; SPX.0826; SPX.0828; SPX.0830; SPX.0832; SPX.0845; SPX.0851; SPX.0852; SPX.0853; SPX.0854; SPX.0855; SPX.0857; SPX.0865; SPX.0867; SPX.0869; SPX.0880. Seventeen of these exhibits were admitted in their entirety in *Robinson*.

³⁰ The three exhibits are: SPX.0902; SPX.0906; SPX.0907.

³¹ The eighty-nine exhibits are: SPX.01042; SPX.01054; SPX.01056; SPX.01057; SPX.01058; SPX.01059; SPX.01060; SPX.01062; SPX.01063; SPX.01066; SPX.01067; SPX.01068; SPX.01069; SPX.01070; SPX.01071; SPX.01072; SPX.01073; SPX.01074; SPX.01075; SPX.01077; SPX.01079; SPX.01082; SPX.01083; SPX.01084; SPX.01086; SPX.01087; SPX.01088; SPX.01089; SPX.01090; SPX.01091; SPX.01092; SPX.01093; SPX.01095; SPX.01096; SPX.01097; SPX.01098; SPX.01099; SPX.01100; SPX.01101;

The Government objects to eighty-one of these exhibits on relevance grounds. Dkt. No. 178-1, at 62–68. The eighty-one exhibits to which the Government objects include a variety of documents discussing the MR-GO, flooding in Southeast Louisiana, and the Army Corps’ response to Hurricanes Katrina and Rita. Dkt. No. 178-1, at 62–68. Therefore, the court rules that these exhibits are relevant, because they “ha[ve] a tendency to make a fact more or less probable,” and “the fact is of consequence in determining the action.” FED. R. EVID. 401; *see also* FED. R. EVID. 402 (stating that “relevant evidence is admissible”).

The Government objects to seventy-eight of these exhibits as cumulative. Dkt. No. 178-1, at 62–68. The court rules that the “probative value” of these exhibits is not “substantially outweighed by [the] danger of . . . needlessly presenting cumulative evidence.” FED. R. EVID. 403.

The Government objects to six of these exhibits, pursuant to RCFC 26, but does not identify a particular subsection of RCFC 26. Dkt. No. 178-1, at 68. These exhibits are four Storm Atlas Maps demonstrating surge levels, an undated model, and photographs from Hurricane Rita. Dkt. No. 178-1, at 68; *see also* 12/14/11 TR at 1051–53. At trial, they were included in a witnesses’ binder (12/14/11 TR at 1051–53), but the court has been unable to determine whether these exhibits were properly disclosed or otherwise complied with RCFC 26. Therefore, these exhibits are not admitted.

The Government objects to fifty-three of these exhibits on hearsay grounds. Dkt. No. 178-1, at 62–68. Six of these exhibits are inadmissible, pursuant to RCFC 26, and need not be considered as to hearsay. Five of these exhibits are newspaper articles that are hearsay. *See* Fed. R. Evid. 801(c) (hearsay definition); FED. R. EVID. 802 (hearsay prohibition); *see also* *Wathen*, 208 Ct. Cl. at 355 (holding that newspaper articles and an investigative report are hearsay and not admissible). Three of these exhibits are government publications that fall under the public records exception to the hearsay prohibition. *See* FED. R. EVID. 803(8) (public records exception). Thirty-nine of these exhibits are emails, memoranda, reports, and other similar documents that satisfy the business records exception to the hearsay prohibition. *See* FED. R. EVID. 803(6) (business records exception). Therefore, forty-two of these exhibits are admissible hearsay, but five are inadmissible.

The Government objects to SPX.01067 and SPX.01068 for lack of foundation. Dkt. No. 178-1, at 63. Neither of these exhibits was discussed at trial, and the court is unable to determine the basis for admitting these documents. Therefore, SPX.01067 and SPX.01068 are not admitted.

SPX.01102; SPX.01103; SPX.01104; SPX.01106; SPX.01107; SPX.01109; SPX.01110; SPX.01112; SPX.01113; SPX.01114; SPX.01115; SPX.01116; SPX.01117; SPX.01119; SPX.01120; SPX.01121; SPX.01126; SPX.01127; SPX.01128; SPX.01130; SPX.01131; SPX.01132; SPX.01133; SPX.01134; SPX.01136; SPX.01139; SPX.01140; SPX.01141; SPX.01142; SPX.01143; SPX.01144; SPX.01145; SPX.01146; SPX.01148; SPX.01150; SPX.01151; SPX.01152; SPX.01153; SPX.01155; SPX.01157; SPX.01158; SPX.01159; SPX.01160; SPX.01161; SPX.01162; SPX.01163; SPX.01164; SPX.01165; SPX.01166; SPX.01168. Three of these exhibits were admitted in their entirety in *Robinson*. Dkt. No. 178-1, at 64.

The Government also objects SPX.01168, photographs from Hurricane Rita, based on *Daubert*. Dkt. No. 178-1, at 68. The court has ruled that this exhibit is not admitted for lack of foundation. Therefore, a *Daubert* analysis is unnecessary.

For these reasons, the court rules that seventy-nine of the ninety-two multimedia and miscellaneous documents exhibits are admissible. See Court Exhibit A § II.A.1.m; Court Exhibit B § II.A.1.m.

2. Robinson Exhibits.³²

On December 5, 2011, the Government filed a Motion To Exclude *Robinson* Material Not Independently Admissible In This Action (“Gov’t Mot.”). The Government objects to the “blanket admission of evidence presented in *Robinson*” on three grounds. Gov’t Mot. at 1.

First, the *Robinson* record “does not address the proof elements Plaintiffs must establish in this case,” because that case “involved analysis of the flooding incident to a single event—Hurricane Katrina.” Gov’t Mot. at 2. It is impossible to “generalize possible flooding scenarios from one storm to another,” and “the physical features on the ground . . . are significantly different today[.]” Gov’t Mot. at 3.

Second, the *Robinson* trial transcripts are inadmissible hearsay. Gov’t Mot. at 3–5 (citing FED. R. EVID. 801(c)(1)–(2) (defining hearsay as a statement “the declarant does not make while testifying at the current trial or hearing . . . offer[ed] in evidence to prove the truth of the matter asserted”); *Anderson v. United States*, 417 U.S. 211, 219–20 (1974) (holding that prior trial testimony is not admissible to prove the truth of the matter asserted); *Trs. of Univ. of Pa. v. Lexington Ins. Co.*, 815 F.2d 890, 905 (3d Cir. 1987) (same); *United States v. Arias*, 575 F.2d 253, 254 n.1 (9th Cir. 1978) (same)). In addition, the Government “had neither the opportunity nor similar motive to examine any witness who testified in *Robinson*,” so the *Robinson* testimony does not satisfy Rule 804(b) of the Federal Rules of Evidence. Gov’t Mot. at 5 (citing FED. R. EVID. 804(b)(1)(A)–(B) (excepting from the hearsay rule testimony “given as a witness at trial, hearing, or lawful deposition, whether given during the current proceeding or a different one,” if the party against whom the testimony is now offered had “an opportunity and similar motive to develop [the testimony] by direct, cross-, or redirect examination”)).

Third, Plaintiffs failed to “designate[] any specific testimony from [*Robinson*] to offer as evidence in this trial” or to “make . . . disclosures of any of the *Robinson* reports.” Gov’t Mot. at 5–6 (citing RCFC App. A ¶ 15(b) (“Any party intending to present substantive evidence by way of deposition testimony . . . shall serve and file a separate motion for leave to file the transcript of such testimony.”); RCFC 26(a) (governing the duty to disclose during discovery)). This contravenes the RCFC’s and Federal Rules of Evidence’s attempts to prevent such “last minute and undefined disclosure.” Gov’t Mot. at 7.

In this case, Plaintiffs seek to admit testimony and expert reports from *Robinson*. The Government first argues that *Robinson* analyzed only Hurricane Katrina, whereas this case involves multiple flooding events. Gov’t Mot. at 2–3. But, complete identity of issues is not

³² For a list of *Robinson* exhibits, see Court Exhibit A § II.A.2.

relevant to a hearsay analysis. See 8A CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 2150 (3d ed.) (“[S]ubstantial identity of issues, rather than precisely the same subject matter, is all that is required.”).

Much of the *Robinson* evidence proffered by Plaintiffs in this case was testimony by Government employees or experts. As such, it is not hearsay. See FED. R. EVID. 801(d)(2)(C) (stating that statements “offered against an opposing party” and “made by the party’s agent or employee on a matter within the scope of that relationship and while it existed” are not hearsay). Other *Robinson* evidence was given under “circumstantial guarantees of trustworthiness,” *i.e.*, at trial; is “offered as evidence of a material fact,” *e.g.*, the Army Corps constructed the MR-GO; “is more probative . . . than any other evidence” reasonably obtainable; and “will best serve the . . . interests of justice,” *e.g.*, judicial efficiency and a comprehensive factual record. See FED. R. EVID. 807(a). As such, this evidence is admissible under the residual exception to the hearsay rule.

Moreover, on February 25, 2011, the court notified the parties that it planned to admit the *Robinson* record, but the Government did not object for over nine months. 2/25/11 TR at 10–11. Thus, the Government’s argument that the *Robinson* evidence constituted a last-minute and undefined disclosure is inaccurate. The parties cited *Robinson* in their briefs and prepared for trial with the understanding that *Robinson* evidence would be admitted. Dkt. No. 144, at 42 (Government Pre-Trial Brief); 11/1/10 TR at 13–14 (explaining that Plaintiffs would “need to redepose some people,” if the *Robinson* materials were inadmissible). As such, the Government waived its argument that the *Robinson* record should not be admitted. See *United States v. Ziegler Bolt & Parts Co.*, 111 F.3d 878, 882 (Fed. Cir. 1997) (holding that the United States Court of Appeals for the Federal Circuit “places waiver within the discretion of the trial court, consistent with its broad duties in managing the conduct of cases pending before it”).

Finally, the court has taken judicial notice of the *Robinson* record. Federal Rule of Evidence 201(b) provides that “[t]he court may judicially notice a fact that is not subject to reasonable dispute because it . . . (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” FED. R. EVID. 201(b). Even though “[m]atters of record in other courts are usually denied notice,” 2 MCCORMICK ON EVIDENCE § 330 (7th ed. 2013), the United States Court of Appeals for the Federal Circuit has taken judicial notice of proceedings before other courts and tribunals. See, *e.g.*, *Old Reliable Wholesale, Inc. v. Cornell Corp.*, 635 F.3d 539, 549 (Fed. Cir. 2011) (“[T]his court can take judicial notice of the fact that the [Patent and Trademark Office] . . . issued a notice of intent to issue a reexamination certificate confirming the patentability of all claims of the ‘950 patent.”); *Advanced Software Design Corp. v. Fed. Reserve Bank*, 583 F.3d 1371, 1379 n.3 (Fed. Cir. 2009) (taking judicial notice of bid protest proceedings at the Government Accountability Office but “stat[ing] no view on the merits”); *Phonometrics, Inc. v. Hospitality Int’l, Inc.*, 120 F. App’x 341, 344–45 (Fed. Cir. 2005) (holding that the district court did not err in taking judicial notice of “facts in another case,” because the court “merely recognized that the transcripts of prior court proceedings were sources ‘whose accuracy cannot reasonably be questioned’”). The Government has not argued that the *Robinson* evidence’s accuracy can reasonably be questioned. As such, the court rules that the proffered evidence from *Robinson* is “not subject to reasonable dispute” and is subject to judicial notice. FED. R. EVID. 201(b).

For these reasons, the court rules that the *Robinson* exhibits are admissible. *See* Court Exhibit A § II.A.2.

B. Court Exhibit.³³

During trial, the court marked Dr. G. Paul Kemp's testimony from *Robinson* as Court Exhibit 9. 12/12/11 TR at 203. Because the court rules that the *Robinson* exhibits are admissible, Court Exhibit 9 is admitted. *See* Court Exhibit A § II.B.

III. THE PARTIES' EXPERT WITNESSES.

The parties each proffered the testimony of two expert witnesses for the December 12, 2011 to December 15, 2011 liability trial. The court ruled above that Plaintiffs' experts, Dr. Joseph N. Suhayda and Dr. G. Paul Kemp, were qualified as experts. *See* Section II.A.1.e. The Government proffered Dr. Louis D. Britsch III³⁴ and Dr. Donald T. Resio³⁵ as experts. Both Drs. Britsch and Resio have extensive educational qualifications and professional experience in relevant fields. Therefore, the court rules that Drs. Britsch and Resio are qualified as expert witnesses and that their testimony: "will help the trier of fact to understand the evidence"; "is based on sufficient facts or data"; "is the product of reliable principles and methods"; and "the expert has reliably applied the principles and methods to the facts[.]" FED. R. EVID. 702.

IV. CONCLUSION.

The documents listed in Court Exhibit A are admitted as evidence. *See* Court Exhibit A. The documents listed in Court Exhibit B are not admitted as evidence. *See* Court Exhibit B.

The entire record submitted in this case contains additional documents, and this Memorandum Opinion And Final Order On Evidentiary Issues does not withdraw these other documents from the record of this case. In addition to the documents identified above, the record of this case includes documents attached to multiple pleadings. By way of example, these documents include those submitted in briefing related to the Government's October 4, 2006 Motion To Dismiss (Dkt. Nos. 27–34); briefing related to the Government's November 7, 2008

³³ The Government previously objected to the wholesale admission of *Robinson* trial evidence in this matter and objects to the use of Court Exhibit 9 in this case for the truth of the matter asserted.

³⁴ Dr. Louis D. Britsch, III is a geologist who manages the Geology Unit of the New Orleans District of the United States Army Corps of Engineers. He obtained his B.S. in Geology from Nicholls State University, his M.S. in Geology from Tulane University, and his Ph.D in Coastal Geology from the University of New Orleans. He has worked for the Army Corps for the past twenty-seven years. *See* 12/8/11 Britsch Direct at 1.

³⁵ Dr. Donald T. Resio is the Director, Taylor Engineering Research Institute, at the University of North Florida. He obtained an undergraduate, masters, and doctoral degrees from the University of Virginia. His doctorate is in Environmental Science: Earth Sciences. *See* 12/8/11 Resio Direct at 2–4.

Motion For Summary Judgment (Dkt. Nos. 67, 70, 74); briefing related to the the Government's June 3, 2011 Motion For Summary Judgment (Dkt. Nos. 106, 107, 113, 114, 118, 119); briefing related to the Government's October 8, 2011 Motion To Dismiss The Claims Of Plaintiffs Tommoso "Tommy" G. Tommaseo And Gwendolyn And Henry Adams (Dkt. Nos. 127, 148, 153); briefing related to Plaintiffs' June 22, 2010 Motion For Class Certification (Dkt. Nos. 91, 207); and briefing related to the Government's September 26, 2013 Motion For Partial Summary Judgment Regarding Federal Grant Offsets (Dkt. Nos. 222, 235).

The Government's December 5, 2011 Motion To Exclude is now moot.

IT IS SO ORDERED.

s/ Susan G. Braden
SUSAN G. BRADEN
Judge

COURT EXHIBIT A

Pursuant to the court's May 1, 2015 Memorandum Opinion And Final Order On Evidentiary Issues, the following documents are admitted to the record of this case.

I. DOCUMENTS PROFFERED BY THE PARTIES WITHOUT OBJECTION THAT THE COURT RULES ARE ADMITTED INTO EVIDENCE.

A. Plaintiffs' Trial Exhibits.

1. Plaintiffs' SPX Exhibits.

SPX.0004	SPX.0008	SPX.0138	SPX.0161	SPX.0163	SPX.0406	SPX.0479
SPX.0487	SPX.0492	SPX.0501	SPX.0535	SPX.0541	SPX.0544	SPX.0545
SPX.0546	SPX.0549	SPX.0625	SPX.0626	SPX.0627	SPX.0628	SPX.0629
SPX.0631	SPX.0632	SPX.0633	SPX.0634	SPX.0635	SPX.0636	SPX.0637
SPX.0638	SPX.0639	SPX.0640	SPX.0641	SPX.0642	SPX.0643	SPX.0644
SPX.0645	SPX.0646	SPX.0647	SPX.0648	SPX.0649	SPX.0650	SPX.0651
SPX.0652	SPX.0653	SPX.0654	SPX.0655	SPX.0656	SPX.0657	SPX.0658
SPX.0659	SPX.0660	SPX.0661	SPX.0662	SPX.0663	SPX.0664	SPX.0665
SPX.0666	SPX.0667	SPX.0668	SPX.0669	SPX.0670	SPX.0671	SPX.0672
SPX.0673	SPX.0674	SPX.0675	SPX.0676	SPX.0677	SPX.0678	SPX.0679
SPX.0680	SPX.0681	SPX.0682	SPX.0683	SPX.0700	SPX.0701	SPX.0702
SPX.0704	SPX.0705	SPX.0706	SPX.0707	SPX.0708	SPX.0709	SPX.0710
SPX.0711	SPX.0712	SPX.0713	SPX.0714	SPX.0717	SPX.0718	SPX.0738
SPX.0740	SPX.0885	SPX.0893	SPX.0894	SPX.0895	SPX.0901	SPX.0905
SPX.0908	SPX.0909	SPX.0910	SPX.0911	SPX.0912	SPX.0913	SPX.0914
SPX.0915	SPX.0916	SPX.0917	SPX.0918	SPX.0919	SPX.0920	SPX.0921
SPX.0922	SPX.0923	SPX.0924	SPX.0925	SPX.0926	SPX.0927	SPX.0928
SPX.0929	SPX.0930	SPX.0931	SPX.0932	SPX.0933	SPX.0934	SPX.0935
SPX.0936	SPX.0937	SPX.0938	SPX.0939	SPX.0940	SPX.0941	SPX.0942
SPX.0943	SPX.0944	SPX.0945	SPX.0946	SPX.0947	SPX.0948	SPX.0949
SPX.0950	SPX.0951	SPX.0952	SPX.0953	SPX.0954	SPX.0955	SPX.0956
SPX.0957	SPX.0958	SPX.0959	SPX.0960	SPX.0961	SPX.0962	SPX.0963
SPX.0964	SPX.0965	SPX.0966	SPX.0967	SPX.0968	SPX.0969	SPX.0970
SPX.0971	SPX.0972	SPX.0973	SPX.0974	SPX.0975	SPX.0976	SPX.0977
SPX.0978	SPX.0979	SPX.0980	SPX.0981	SPX.0982	SPX.0983	SPX.0984
SPX.0985	SPX.0986	SPX.0987	SPX.0988	SPX.0989	SPX.0990	SPX.0991
SPX.0992	SPX.0993	SPX.0994	SPX.0995	SPX.0996	SPX.0997	SPX.0998
SPX.0999	SPX.01000	SPX.01001	SPX.01002	SPX.01003	SPX.01004	SPX.01005
SPX.01006	SPX.01007	SPX.01008	SPX.01009	SPX.01010	SPX.01011	SPX.01012
SPX.01013	SPX.01014	SPX.01015	SPX.01016	SPX.01017	SPX.01018	SPX.01019
SPX.01020	SPX.01021	SPX.01022	SPX.01023	SPX.01024	SPX.01025	SPX.01026
SPX.01027	SPX.01028	SPX.01029	SPX.01030	SPX.01031	SPX.01032	SPX.01033
SPX.01034	SPX.01035	SPX.01036	SPX.01037	SPX.01038	SPX.01039	SPX.01040
SPX.01053	SPX.01154	SPX.01156	DX-41	DX-53	DX-88	DX-138
DX-193	DX-202	DX-211				

2. Robinson Exhibits.

DX-0001; DX-1104; JX-0195.

B. The Government's Trial Exhibits.

1. The Government's DX Exhibits.

DX-1	DX-49	DX-53	DX-78	DX-79	DX-80	DX-81
DX-86	DX-88	DX-91	DX-105	DX-111	DX-115	DX-133
DX-138	DX-174	DX-174(a)	DX-193	DX-195	DX-199	DX-202
DX-208	DX-210	DX-211	DX-212	DX-213	DX-214	DX-215
DX-216	DX-217					

2. Robinson Exhibits.

DX-1; DX-1104; JX-195.

C. Plaintiffs' Written Direct Testimony.

Dkt. No. 158 (Suhayda); Dkt. No. 159 (Kemp).

D. The Government's Written Direct Testimony.

Dkt. No. 160 (Britsch); Dkt. No. 161 (Resio).

E. Plaintiffs' Deposition Designations.

Nancy Powell	January 30, 2008 deposition: 1; 6–15; 17–26; 28–30; 42–43; 50–53; 63–74; 79–84; 106–07; February 8, 2011 deposition: 1; 9–20; 25–37; 41–47; 55–66; 84–99; 106–09; 112–15; 123–37.
Greg Miller	1; 8–15; 23–35; 45–46; 55–63; 65–76; 78–81; 85–87; 107–08.
Michael Park	1–11; 36–48; 77–79.
Donald Resio	1; 5–15; 18–27; 29–31; 34–39; 47–56; 64–74; 84–87; 89–118; 125–31; 134–36.
Jerry Foster	1; 8–22; 25–31; 37–38; 45–49; 51–52; 58–60; 63–73; 75–80; 92–103; 110–23; 130–35; 141–58; 165–67; 175–79; 185–86; 199–200; 210; 221–25; 228–30; 234–41; 246–49.
Michelle Daigle	1; 6–13; 58–59; 78–83; 86–87; 107–08; 110–13; 135–37; 141–42.

Christopher Gilmore	1; 5–6; 9–12.
Steve Patorno	1–7; 9–20; 26.
Linda Mathies	1; 7–11; 15–21; 43–50; 55–67; 75–82; 98–99.
Sue Hawes	1; 4–9; 21–22; 33–41; 44–45.
Keith O’Cain	1; 9–13; 16–17; 28–30; 32–33; 36; 56; 73–78; 81–86; 88–90; 92–93; 106–22.
Rick Broussard	1; 6–8; 26–30; 38; 42–43.
Gary Zimmerer	1; 7–25; 27–40; 45–48; 50–59; 67–68; 81–82; 88–89; 101–04; 107–08; 117–25; 128–29; 139–52; 156–61.
Tommoso “Tommy” G. Tommaseo	October 18, 2010 deposition: 22:2–20; 27:19–28:11; 36:7–18; 54:20–55:15; 61:4–8; 71:16–25; 81:11–82:4; 90:19–91:6; 99:14–23; 109:4–11; 131:24–132:13; 157:15–19; 173:15–174:20.
Steven and Cynthia Bordelon	October 14, 2010 deposition: 17:8–15; 18:5–19:1.
Edward John Robin, Jr.	October 13, 2010 deposition: 18:17–19:12; 21:17–22; 26:21–27:15.
Rod W. Willhoft	October 20, 2010 deposition: 24:21–25:9; 36:9–36:24; 43:24–44:2.
Gwendolyn and Henry Adams	October 15, 2010 deposition: 18:9–19:1.
Craig P. Tafaro, Jr.	January 13, 2011 deposition: 24:18–25:5; 26:4–24; 40:12–41:21; 78:18–79:2; 98:2–15; 103:1–4; 114:4–115:25; 122:19–22.
Michelle Walsh	January 13, 2011 deposition: 46:16–20.
Myllinda Gettys	January 12, 2011 deposition: 22:21–23:9; 30:9–24; 31:11–13; 45:22–46:15; 50:24–51:17; 56:11–19.

F. The Government’s Deposition Designations.

Tommoso “Tommy” G. Tommaseo	October 18, 2010 deposition: 1; 5:13–8:3; 10:18–11:5; 14:13–16:4; 19:17–20:13; 20:22–21:22; 24:6–10; 26:22–27:9; 32:2–9; 34:15–36:6; 38:1–9; 38:19–39:3; 39:13–21; 42:5–45:19; 69:25–71:15; 78:23–79:2; 79:25–81:10; 88:6–90:18; 97:1–99:13; 104:2–
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106:19; 117:12–124:25; 126:1–13; 129:3–12;
130:7–24; 133:12–16; 135:13–24; 139:6–144:9;
153:18–157:14.

Steven John Bordelon

October 14, 2010 deposition: 1; 8:1–9:11; 13:12–
14:8; 14:20–24; 16:1–17:7; 20:16–22:10; 24:25–
25:9; 26:4–14; 30:4–9; 30:16–20; 31:15–32:4; 32:9–
21; 37:2–7.

Brad Lee Robin

October 13, 2010 deposition: 1; 7:5–9; 11:17–22;
13:2–4; 14:19–15:23; 24:13–15; 33:1–17; 34:6–20;
37:5–39:9; 40:24–41:18; 45:18–46:21; 48:2–49:12;
56:15–58:24; 65:2–7; 65:14–68:23; 71:15–72:3;
75:11–23; 80:7–25; 82:2–8; 89:12–25; 93:4–10;
95:11–16; 97:12–98:24; 99:17–100:4; 101:11–14;
119:1–12.

Edward John Robin, Jr.

October 13, 2010 deposition: 1; 6:5–8; 16:3–8;
21:25–24; 23:22–24:19; 25:7–27:15; 28:16–18;
33:9–10; 35:1–4.

Rod Wilhoft

October 10, 2010 deposition: 1; 5:19–24; 7:24–8:1;
8:18–22; 9:1–11:8; 17:19–18:15; 20:6–25; 22:1–11;
23:6–16; 28:3–11; 29:2–30:23; 32:9–13; 34:5–24;
42:22–43:8; 44:11–17; 45:14–46:1; 48:5–14.

Gwendolyn and Henry Adams

October 15, 2010 deposition: 1; 5:9–15; 6:8–13; 7:8–
22; 8:18–9:4; 12:21–13:18; 15:19–16:8; 19:2–20:13;
27:23–28:16; 38:20–39:7.

Craig Taffaro

January 13, 2011 deposition: 1; 19:7–9; 41:22–
42:13; 45:18–47:19; 48:9–49:13; 51:24–53:20;
66:16–67:3; 69:2–15; 71:14–17; 73:10–14; 83:20–
24; 93:12–95:23; 96:21–98:1; 99:11–101:11; 122:6–
18.

Michelle Walsh

January 12, 2011 deposition: 1; 22:8–23:8; 38:19–
40:21; 49:2–19; 52:2–17; 56:7–65:21.

Myllinda Gettys

January 12, 2011 deposition: 1; 8:13–9:13; 32:14–
17; 34:20–35:13.

Nancy Powell

January 30, 2008 deposition: 39:20–41:1; 45:10–22;
February 8, 2011 deposition: 49–52.

Greg Miller

37–40; 89:1–90:5.

Michael Park	13:1–23; 29:1–34; 58:16–61:14.
Donald Resio	138–161:1–6.
Jerry Foster	202–05; 214–17.
Sue Hawes	23–32; 42–43; 46–52.
Keith O’Cain	21–24.
Gary Zimmerer	60–66; 76:15–78:21; 90–91:16; 98:16–99.

II. DOCUMENTS PROFFERED BY PLAINTIFFS, TO WHICH THE GOVERNMENT OBJECTS.

A. Plaintiffs’ Trial Exhibits.

1. Plaintiffs’ SPX Exhibits.

a. Interagency Performance Evaluation Task Force, Independent Levee Investigations Team, and Team Louisiana Exhibits.

SPX.0001	SPX.0002	SPX.0003	SPX.0005	SPX.0006	SPX.0007	SPX.0008
SPX.0009	SPX.0010	SPX.0011	SPX.0012	SPX.0013	SPX.0014	SPX.0015
SPX.0016	SPX.0017	SPX.0018	SPX.0019	SPX.0020	SPX.0021	SPX.0022
SPX.0023	SPX.0024	SPX.0025	SPX.0026	SPX.0027	SPX.0028	SPX.0029

b. United States Army Corps Of Engineers Exhibits.

SPX.0100	SPX.0101	SPX.0102	SPX.0103	SPX.0104	SPX.0105	SPX.0107
SPX.0108	SPX.0113	SPX.0117	SPX.0118	SPX.0119	SPX.0123	SPX.0127
SPX.0128	SPX.0129	SPX.0130	SPX.0131	SPX.0132	SPX.0133	SPX.0134
SPX.0135	SPX.0136	SPX.0137	SPX.0140	SPX.0141	SPX.0142	SPX.0143
SPX.0144	SPX.0145	SPX.0146	SPX.0147	SPX.0148	SPX.0151	SPX.0152
SPX.0155	SPX.0156	SPX.0157	SPX.0158	SPX.0159	SPX.0160	SPX.0162
SPX.0164	SPX.0166	SPX.0167	SPX.0168	SPX.0169	SPX.0170	SPX.0172
SPX.0173	SPX.0174	SPX.0175	SPX.0176	SPX.0178	SPX.0180	SPX.0184
SPX.0185	SPX.0186	SPX.0187	SPX.0188	SPX.0189	SPX.0190	SPX.0191
SPX.0192	SPX.0193	SPX.0194	SPX.0195	SPX.0196	SPX.0197	SPX.0198
SPX.0199	SPX.0200	SPX.0201	SPX.0202	SPX.0203	SPX.0204	SPX.0205
SPX.0206	SPX.0207	SPX.0208	SPX.0209	SPX.0210	SPX.0211	SPX.0212
SPX.0213	SPX.0214	SPX.0215	SPX.0216	SPX.0217	SPX.0218	SPX.0219
SPX.0220	SPX.0222	SPX.0223	SPX.0224	SPX.0225	SPX.0226	SPX.0229
SPX.0230	SPX.0231	SPX.0232	SPX.0233	SPX.0234	SPX.0236	SPX.0237
SPX.0238	SPX.0239	SPX.0241	SPX.0242	SPX.0243	SPX.0244	SPX.0246
SPX.0247	SPX.0248	SPX.0249	SPX.0250	SPX.0251	SPX.0252	SPX.0253
SPX.0254	SPX.0255	SPX.0256	SPX.0257	SPX.0258	SPX.0259	SPX.0260

SPX.0263	SPX.0266	SPX.0267	SPX.0268	SPX.0269	SPX.0272	SPX.0276
SPX.0277	SPX.0278	SPX.0280	SPX.0281	SPX.0282	SPX.0283	SPX.0284
SPX.0285	SPX.0286	SPX.0287	SPX.0289	SPX.0290	SPX.0291	SPX.0292
SPX.0293	SPX.0294	SPX.0295	SPX.0296	SPX.0297	SPX.0298	SPX.0303
SPX.0305	SPX.0308	SPX.0309	SPX.0310	SPX.0312	SPX.0315	SPX.0316
SPX.0319	SPX.0324	SPX.0326	SPX.0329	SPX.0331	SPX.0333	SPX.0334
SPX.0335	SPX.0337	SPX.0338	SPX.0342	SPX.0344	SPX.0346	SPX.0347
SPX.0349	SPX.0351	SPX.0352	SPX.0353	SPX.0354	SPX.0355	SPX.0356
SPX.0357	SPX.0359	SPX.0360	SPX.0361	SPX.0362	SPX.0363	SPX.0364
SPX.0365	SPX.0366	SPX.0367	SPX.0368	SPX.0372	SPX.0373	SPX.0374
SPX.0383	SPX.0384	SPX.0392	SPX.0393	SPX.0394	SPX.0395	SPX.0396
SPX.0397	SPX.0398	SPX.0399	SPX.0400	SPX.0401	SPX.0402	SPX.0403
SPX.0405	SPX.0407	SPX.0408				

c. Federal Emergency Management Agency Documents And Related Materials.

SPX.0409	SPX.0410	SPX.0411	SPX.0412	SPX.0413	SPX.0414	SPX.0415
SPX.0416	SPX.0418	SPX.0419	SPX.0420	SPX.0421	SPX.0422	SPX.0423
SPX.0424	SPX.0425	SPX.0426	SPX.0427	SPX.0428	SPX.0429	SPX.0430
SPX.0431	SPX.0432	SPX.0433	SPX.0434	SPX.0435	SPX.0436	SPX.0437
SPX.0438	SPX.0439	SPX.0440	SPX.0441	SPX.0442	SPX.0443	SPX.0444
SPX.0445	SPX.0446	SPX.0447	SPX.0448	SPX.0449	SPX.0450	SPX.0451
SPX.0452	SPX.0453	SPX.0454	SPX.0455	SPX.0456	SPX.0457	SPX.0458
SPX.0459	SPX.0460	SPX.0461	SPX.0462	SPX.0463	SPX.0464	SPX.0465
SPX.0466	SPX.0467	SPX.0469	SPX.0470			

d. Robinson Expert Reports.

See Court Exhibit A § II.A.2.

e. Plaintiffs' Expert Declarations, Reports, And Materials Cited.

SPX.0500	SPX.0502	SPX.0503	SPX.0504	SPX.0505	SPX.0506	SPX.0507
SPX.0508	SPX.0509	SPX.0510	SPX.0511	SPX.0512	SPX.0513	SPX.0515
SPX.0517	SPX.0518	SPX.0519	SPX.0520	SPX.0521	SPX.0522	SPX.0523
SPX.0524	SPX.0525	SPX.0526	SPX.0527	SPX.0528		

f. Plaintiffs' Declarations And Depositions.

SPX.0531	SPX.0533	SPX.0536	SPX.0539	SPX.0540	SPX.0542	SPX.0547
SPX.0548	SPX.0556	SPX.0557	SPX.0558	SPX.0560	SPX.0563	SPX.0564
SPX.0566	SPX.0568	SPX.0570	SPX.0571	SPX.0573	SPX.0574	SPX.0575
SPX.0577	SPX.0578	SPX.0579	SPX.0584	SPX.0586	SPX.0588	SPX.0590
SPX.0594	SPX.0597	SPX.0598	SPX.0603	SPX.0609	SPX.0613	SPX.0615
SPX.0617	SPX.0618	SPX.0624				

g. Congressional Documents.

SPX.0687	SPX.0688	SPX.0689	SPX.0690	SPX.0692	SPX.0693	SPX.0696
SPX.0697	SPX.0698					

h. St. Bernard Parish Studies.

SPX.0715	SPX.0719	SPX.0720	SPX.0721	SPX.0722
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i. Additional Reports.

SPX.0726	SPX.0728	SPX.0732	SPX.0733	SPX.0734	SPX.0736	SPX.0737
SPX.0741	SPX.0743	SPX.0744	SPX.0745	SPX.0746	SPX.0747	SPX.0748
SPX.0755	SPX.0756					

j. Articles.

(No exhibits admitted)

k. Mississippi River-Gulf Outlet Closure Committee Documents.

SPX.0773	SPX.00774	SPX.00777	SPX.0780	SPX.0783	SPX.0785	SPX.0788
SPX.0797	SPX.0807	SPX.0817	SPX.0822	SPX.0824	SPX.0825	SPX.0826
SPX.0828	SPX.0830	SPX.0832	SPX.0845	SPX.0851	SPX.0852	SPX.0853
SPX.0854	SPX.0855	SPX.0857	SPX.0865	SPX.0867	SPX.0869	SPX.0880

l. Property Records Of Representative Plaintiffs.

SPX.0902	SPX.0906	SPX.0907
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m. Multimedia And Miscellaneous Documents.

SPX.01042	SPX.01054	SPX.01056	SPX.01057	SPX.01058	SPX.01062	SPX.01063
SPX.01066	SPX.01067	SPX.01068	SPX.01069	SPX.01070	SPX.01071	SPX.01074
SPX.01075	SPX.01077	SPX.01079	SPX.01082	SPX.01083	SPX.01084	SPX.01086
SPX.01087	SPX.01088	SPX.01090	SPX.01091	SPX.01092	SPX.01093	SPX.01095
SPX.01096	SPX.01097	SPX.01098	SPX.01099	SPX.01100	SPX.01101	SPX.01102
SPX.01103	SPX.01104	SPX.01106	SPX.01107	SPX.01109	SPX.01112	SPX.01113
SPX.01114	SPX.01115	SPX.01116	SPX.01117	SPX.01119	SPX.01120	SPX.01121
SPX.01126	SPX.01127	SPX.01128	SPX.01130	SPX.01131	SPX.01132	SPX.01133
SPX.01134	SPX.01136	SPX.01139	SPX.01140	SPX.01141	SPX.01142	SPX.01143
SPX.01144	SPX.01145	SPX.01146	SPX.01148	SPX.01150	SPX.01151	SPX.01152
SPX.01153	SPX.01155	SPX.01157	SPX.01158	SPX.01159	SPX.01160	SPX.01161

2. Robinson Exhibits.

Robinson Plaintiffs' Exhibits						
PX0004	PX0005	PX0006	PX0009	PX0012	PX0013	PX0014
PX0016	PX0027	PX0031	PX0033	PX0039	PX0042	PX0045
PX0047	PX0053	PX0059	PX0065	PX0068	PX0069	PX0072
PX0073	PX0074	PX0075	PX0076	PX0077	PX0078	PX0079
PX0080	PX0082	PX0083	PX0084	PX0090	PX0091	PX0092
PX0093	PX0094	PX0096	PX0096.1	PX0096.13	PX0096.16	PX0096.17
PX0096.18	PX0096.19	PX0096.22	PX0096.25	PX0096.28	PX.0096.31	PX0096.4
PX0097	PX0098	PX0098.2	PX0098.8	PX0098.20	PX0103	PX0104
PX0105	PX0106	PX0108	PX0109	PX0139	PX0141	PX0143
PX0148	PX0154	PX0161	PX0178	PX0180	PX0181	PX0184
PX0184.1	PX0184.2	PX0186	PX0187	PX0189	PX0190	PX0193
PX0194	PX0195	PX0197	PX0198	PX0203	PX0204	PX0206
PX0206.1	PX0212	PX0216	PX0218	PX0220	PX0222	PX0225
PX0231	PX0273	PX0306	PX0351	PX0353	PX0370	PX0371
PX0379	PX0387	PX0391	PX0410	PX0412	PX0431	PX0462
PX0589	PX0628	PX0656	PX0690	PX0699	PX0716	PX0722
PX0734	PX0746	PX0790	PX0792	PX0794	PX0796	PX0818
PX0864	PX0872	PX0882	PX0888	PX0896	PX0899	PX0907
PX1009	PX1011	PX1012	PX1018	PX1030	PX1033	PX1034
PX1038	PX1044	PX1046	PX1049	PX1050	PX1086	PX1104
PX1114	PX1115	PX1116	PX1120	PX1124	PX1135	PX1153
PX1156	PX1157	PX1158	PX1159	PX1164	PX1165	PX1174
PX1182	PX1183	PX1185	PX1187	PX1212	PX1213	PX1216
PX1239	PX1240	PX1242	PX1243	PX1244	PX1246	PX1247
PX1249	PX1253	PX1254	PX1255	PX1256	PX1257	PX1270
PX1278	PX1286	PX1289	PX1331	PX1332	PX1343	PX1344
PX1345	PX1347	PX1348	PX1363.1	PX1416	PX1449	PX1459
PX1460	PX1470	PX1472	PX1487	PX1487.1	PX1511	PX1512
PX1513	PX1516	PX1517	PX1517.1	PX1517.2	PX1517.4	PX1536
PX1540	PX1557	PX1598	PX1602	PX1615	PX1630	PX1633
PX1634	PX1635	PX1638	PX1639	PX1652	PX1671	PX1673
PX1679	PX1703	PX1771	PX1804	PX1808	PX1810.1	PX1810.10
PX1810.12	PX1810.13	PX1810.14	PX1810.16	PX1810.17	PX1810.18	PX1810.19
PX1810.20	PX1810.21	PX1810.22	PX1810.23	PX1810.41	PX1810.5	PX1810.6
PX1810.7	PX1810.8	PX1810.9	PX1812.1	PX1812.2	PX1812.3	PX1851
PX.1877	PX1877.1	PX1877.1A	PX1877.1V	PX1877.2	PX1877.3	PX1877.4
PX1877.5	PX1877.6	PX1884	PX1911	PX1912	PX1944	PX1946
PX1958	PX1961	PX1965	PX1968	PX1969	PX1970	PX1975

PX1978	PX1981	PX1990	PX2008	PX2009	PX2013	PX2014
PX2016	PX2017	PX2018	PX2019	PX2020	PX2021	PX2023
PX2025	PX2047	PX2063	PX2068	PX2082	PX2089	PX2092
PX2100	PX2102	PX2104	PX2107	PX2109	PX2111	PX2114
PX2115	PX2118	PX2120	PX2121	PX2122	PX2128	PX2133.1
PX2137	PX2138	PX2138.2	PX2138.3	PX2144	PX2145	PX2146
PX2147.1	PX2150	PX2153	PX2154	PX2155	PX2158	PX2159
PX2163	PX2165	PX2167	PX2169	PX2171	PX2172	PX2175
PX2176	PX2176.1	PX2179	PX2183	PX2185	PX2187	

Robinson Defendant's Exhibits (DX)						
DX-0013	DX-0015	DX-0023	DX-0034	DX-0036	DX-0043	DX-0051
DX-0053	DX-0068	DX-0069	DX-0070	DX-0078	DX-0094	DX-0096
DX-0105	DX-0107	DX-0109	DX-0110	DX-0112	DX-0114	DX-0123
DX-0135	DX-0158	DX-0160	DX-0163	DX-0177	DX-0178	DX-0179
DX-0180	DX-0181	DX-0182	DX-0183	DX-0184	DX-0185	DX-0186
DX-0189	DX-0211	DX-0216	DX-0234	DX-0254	DX-0258	DX-0299
DX-0329	DX-0332	DX-0334	DX-0335	DX-0342	DX-0346	DX-0350
DX-0353	DX-0355	DX-0357	DX-0359	DX-0363	DX-0364	DX-0366
DX-0370	DX-0371	DX-0377	DX-0380	DX-0387	DX-0392	DX-0403
DX-0407	DX-0412	DX-0412a	DX-0412b	DX-0433	DX-0435	DX-0438
DX-0440	DX-0442	DX-0444	DX-0447	DX-0448	DX-0455	DX-0456
DX-0457	DX-0458	DX-0470	DX-0472	DX-0473	DX-0503	DX-0505
DX-0507	DX-0508	DX-0512	DX-0515R	DX-0519	DX-0520	DX-0521
DX-0522	DX-0523	DX-0524	DX-0525	DX-0526	DX-0528	DX-0529
DX-0530	DX-0531	DX-0532	DX-0533	DX-0534	DX-0535	DX-0536
DX-0537	DX-0538	DX-0539	DX-0540	DX-0541	DX-0542	DX-0543
DX-0544	DX-0545	DX-0546	DX-0547	DX-0548	DX-0549	DX-0550
DX-0551	DX-0552	DX-0555	DX-0568	DX-0570	DX-0572	DX-0573
DX-0591	DX-0593	DX-0594	DX-0601	DX-0602	DX-0603	DX-0604
DX-0605	DX-0606	DX-0607	DX-0608	DX-0610	DX-0623	DX-0650
DX-0651	DX-0653	DX-0781	DX-0782	DX-0783	DX-0785	DX-0786
DX-0790	DX-0794	DX-0799	DX-0800	DX-0802	DX-0814	DX-0821
DX-0823	DX-0826	DX-0828	DX-0835	DX-0837	DX-0843	DX-0844
DX-0862	DX-0863	DX-0864	DX-0876	DX-0878	DX-0881	DX-0882
DX-0883	DX-0884	DX-0889	DX-0894	DX-0895	DX-0897	DX-0900
DX-0902	DX-0909	DX-0912	DX-0919	DX-0925	DX-0927	DX-0928
DX-0929	DX-0931	DX-0932	DX-0934	DX-0935	DX-0936	DX-0941
DX-0946	DX-0961	DX-0962	DX-0963	DX-0964	DX-0965	DX-0986
DX-0992	DX-0994	DX-0997	DX-1000	DX-1007	DX-1015	DX-1016

DX-1018	DX-1026	DX-1027	DX-1034	DX-1042	DX-1043	DX-1050
DX-1052	DX-1057	DX-1058	DX-1064R	DX-1067	DX-1068	DX-1069
DX-1070	DX-1071	DX-1072	DX-1073	DX-1074	DX-1075	DX-1076
DX-1077	DX-1079	DX-1082	DX-1083	DX-1084	DX-1088	DX-1094
DX-1095	DX-1096	DX-1099	DX-1101	DX-1102	DX-1125	DX-1130
DX-1131	DX-1132	DX-1140	DX-1145	DX-1152	DX-1153	DX-1154
DX-1155	DX-1194	DX-1226	DX-1235	DX-1239	DX-1252	DX-1253
DX-1256	DX-1266	DX-1272	DX-1273	DX-1274	DX-1276	DX-1279
DX-1294	DX-1296	DX-1297	DX-1304	DX-1305	DX-1308	DX-1313
DX-1314	DX-1316	DX-1317	DX-1319	DX-1321	DX-1343R	DX-1344
DX-1345	DX-1349	DX-1362	DX-1366	DX-1368	DX-1369	DX-1370
DX-1371	DX-1381	DX-1399	DX-1401	DX-1409	DX-1410	DX-1411
DX-1413	DX-1415	DX-1418	DX-1419	DX-1420	DX-1424	DX-1428
DX-1430	DX-1438	DX-1443	DX-1447	DX-1472	DX-1476	DX-1481
DX-1483	DX-1487	DX-1489	DX-1490	DX-1506	DX-1535	DX-1537
DX-1542	DX-1544	DX-1545	DX-1585	DX-1590	DX-1591	DX-1593
DX-1594	DX-1599	DX-1605	DX-1606	DX-1607	DX-1608	DX-1610
DX-1612	DX-1614	DX-1617	DX-1619	DX-1620	DX-1623	DX-1624
DX-1630	DX-1631	DX-1635	DX-1637	DX-1639	DX-1641	DX-1642
DX-1643	DX-1644	DX-1645	DX-1650	DX-1651	DX-1654	DX-1662
DX-1663	DX-1665	DX-1666	DX-1667	DX-1673	DX-1674	DX-1675
DX-1679	DX-1684	DX-1685	DX-1693	DX-1702	DX-1712	DX-1714
DX-1718	DX-1719	DX-1720	DX-1721	DX-1722	DX-1729	DX-1735
DX-1741	DX-1742	DX-1743	DX-1744	DX-1745	DX-1747	DX-1749
DX-1750	DX-1752	DX-1753	DX-1755	DX-1756	DX-1762	DX-1763
DM-0002	DM-0011	DM-0019	DM-0020	DM-0032		

Robinson Joint Exhibits (JX):						
JX-0001	JX-0002	JX-0003	JX-0004	JX-0005	JX-0006	JX-0007
JX-0008	JX-0009	JX-0010	JX-0013	JX-0023	JX-0024	JX-0027
JX-0028	JX-0032	JX-0033	JX-0068	JX-0070	JX-0071	JX-0074
JX-0075	JX-0076	JX-0078	JX-0084	JX-0085	JX-0086	JX-0087
JX-0093	JX-0094	JX-0095	JX-0096	JX-0099	JX-0102	JX-0103
JX-0104	JX-0106	JX-0107	JX-0113	JX-0114	JX-0115	JX-0116
JX-0122	JX-0123	JX-0124	JX-0126.3	JX-0128	JX-0129	JX-0131
JX-0132	JX-0133	JX-0134	JX-0135	JX-0138	JX-0139	JX-0141
JX-0150	JX-0154	JX-0167	JX-0168	JX-0171	JX-0173	JX-0183
JX-0184	JX-0185	JX-0186	JX-0187	JX-0188	JX-0189	JX-0192
JX-0194	JX-0196	JX-0197	JX-0199	JX-0200	JX-0201	JX-0202
JX-0204	JX-0206	JX-0207	JX-0208	JX-0209	JX-0210	JX-0211

JX-0212	JX-0228	JX-0238	JX-0239	JX-0243	JX-0244	JX-0258
JX-0261	JX-0265	JX-0266	JX-0278	JX-0279	JX-0280	JX-0281
JX-0282	JX-0285	JX-0289	JX-0295	JX-0300	JX-0302	JX-0303
JX-0308	JX-0310	JX-0311	JX-0312	JX-0313	JX-0320	JX-0322
JX-0325	JX-0326	JX-0328	JX-0332	JX-0334	JX-0345	JX-0349
JX-0350	JX-0352	JX-0353	JX-0357	JX-0360	JX-0361	JX-0369
JX-0373	JX-0378	JX-0379	JX-0380	JX-0383	JX-0385	JX-0386
JX-0397	JX-0398	JX-0399	JX-0405	JX-0406	JX-0408	JX-0409
JX-0419	JX-0420	JX-0422	JX-0423	JX-0428	JX-0439	JX-0440
JX-0444	JX-0445	JX-0446	JX-0460	JX-0463	JX-0466	

<i>Robinson Plaintiffs' Expert Reports</i>						
SPX.0471	SPX.0472	SPX.0473	SPX.0474	SPX.0475	SPX.0476	SPX.0478
SPX.0480	SPX.0482	SPX.0483	SPX.0484	SPX.0485	SPX.0486	SPX.0488
SPX.0489						

B. Court Exhibit.

Court Exhibit 9.

COURT EXHIBIT B

Pursuant to the court's May 1, 2015 Memorandum Opinion And Final Order On Evidentiary Issues, the following documents are not admitted to the record of this case.

I. DOCUMENTS PROFFERED BY THE PARTIES WITHOUT OBJECTION THAT THE COURT RULES ARE ADMITTED INTO EVIDENCE.

(All exhibits admitted)

II. DOCUMENTS PROFFERED BY PLAINTIFFS, TO WHICH THE GOVERNMENT OBJECTS

A. Plaintiffs' Trial Exhibits.

1. Plaintiffs' SPX Exhibits.

a. Interagency Performance Evaluation Task Force, Independent Levee Investigations Team, and Team Louisiana Exhibits.

(All exhibits admitted)

b. United States Army Corps Of Engineers Exhibits.

(All exhibits admitted)

c. Federal Emergency Management Agency Documents And Related Materials.

(All exhibits admitted)

d. *Robinson* Expert Reports.

(All exhibits admitted)

e. Plaintiffs' Expert Declarations, Reports, And Materials Cited.

SPX.0491 SPX.0494 SPX.0495 SPX.0496 SPX.0497 SPX.0499

f. Plaintiffs' Declarations And Depositions.

SPX.0529 SPX.0530 SPX.0537 SPX.0538 SPX.0580 SPX.0581 SPX.0582
SPX.0583

g. Congressional Documents.

(All exhibits admitted)

h. St. Bernard Parish Studies.

(All exhibits admitted)

i. Additional Reports.

SPX.0749 SPX.0750 SPX.0757

j. Articles.

SPX.0758 SPX.0759 SPX.0760 SPX.0761 SPX.0762 SPX.0763 SPX.0764
SPX.0765 SPX.0766 SPX.0767 SPX.0770 SPX.0771 SPX.0772

k. Mississippi River-Gulf Outlet Closure Committee Documents.

(All exhibits admitted)

l. Property Records Of Representative Plaintiffs.

(All exhibits admitted)

m. Multimedia And Miscellaneous Documents.

SPX.01059 SPX.01060 SPX.01072 SPX.01073 SPX.01089 SPX.01110 SPX.01162
SPX.01163 SPX.01164 SPX.01165 SPX.01166 SPX.01168

2. Robinson Exhibits.

(All exhibits admitted)

B. Court Exhibit.

(Exhibit admitted)